In re: Case No. 04-45272 RJK Chapter 13

Jeremy Jon Whitcomb,

OBJECTION TO CONFIRMATION

Debtor.

- TO: Debtor, Jeremy Jon Whitcomb; Attorney for Debtor, Malin D. Greenberg; Jasmine Z. Keller, Chapter 13 Trustee; U.S. Trustee; and other parties in interest.
- 1. General Motors Acceptance Corporation, ("GMAC") a secured creditor of Debtor, by its undersigned attorney, makes this objection to the confirmation of the proposed plan of the Debtor.
- 2. This objection is filed pursuant to Fed. R. Bankr. P. 3020(b) and GMAC requests this Court to enter an order denying confirmation of Debtor's proposed Chapter 13 plan (the "Plan"). This Court has jurisdiction over this motion pursuant to 28 U.S.C. Sec. 1334(a) and 157(a), 11 U.S.C. §1325 and applicable rules. This is a core proceeding.
- 3. Hearing on confirmation of the Plan is scheduled for 10:30 a.m. on November 18, 2004, before the Honorable Robert J. Kressel, in Courtroom 8 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415, or as soon thereafter as counsel can be heard.
- 4. The petition commencing this Chapter 13 case was filed on September 20, 2004 and the case is now pending in this Court.
- 5. GMAC holds a valid, perfected interest in a 2000 Chevrolet Blazer, VIN 1GNDT13W5Y2293688, (the "Vehicle"). The value of the Vehicle is \$12,621.67.

- 6. Copies of GMAC's agreement with Debtor (the "Contract") and evidence of perfection of GMAC's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.
- 7. The balance due to GMAC as of the petition date totals \$15,218.89 together with interest accruing at the contract rate of 10.99%. The fair market value of the Vehicle is \$12,621.67. Accordingly, the claim of GMAC should be treated as secured to the extent of \$12,621.67.
- 8. The Plan, however, provides for (i) GMAC's secured claim of \$15,000.00; (ii) total payment on GMAC's secured claim of \$8,500.00; and (iii) monthly payments of \$200.00 commencing in month 1 for 7 months and monthly payments of \$450.00 commencing in month 8 until paid.
- 9. Using the contract rate of interest, the Plan fails to satisfy GMAC's secured claim plus interest utilizing the payments set forth by Debtor.
 - 10. The Plan does not comply with the provisions of Chapter 13.
- 11. The Plan does not provide GMAC with adequate protection of its interest in the vehicle.
- 12. Movant gives notice that it may, if necessary, call J. Wood or another representative of GMAC to testify at the hearing.
- 13. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION WILL BE USED FOR THAT PURPOSE.

WHEREFORE, GMAC respectfully requests this Court to enter an order denying confirmation of the Debtor's proposed plan and such other further relief as is just and equitable.

Dated: October 6, 2004___ RIEZMAN BERGER, P.C.

/e/ Marilyn J. Washburn
Marilyn J. Washburn (#0324140)
7700 Bonhomme, 7th Floor
St. Louis, MO 63105
(314) 727-0101
Attorneys for GMAC

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if you owe more than the not proceeds of sale, you will pay the Creditor than difference between the not proceeds of sale and what you owe when the Creditor asks for it. If you do not pay this amount when asked, you may also be compaid historic at the highest lawful rase until you do pay as you owe to the Goddinor.

Collection Gosts. If the Creditor hives an attorney to collect what you take, you will pay the anamer's resconable tes and any count costs. The attorney's less will not exceed 15% of the anteuns that you give.

Delay in Enforcing Fights and Changes of this Contract. The Creditor can delay or refrain from entorting any of its rights under this contract without tosing them. For example, the Creditor can estend the first in making some payments without example others. Any change in terms of making some payments without example others, the Creation. No east changes the contract must be in writing and eignore by the Creation. No east changes are bridge, if any part of this contlact is not valid, air other parts with remain enforceable.

Marrardes Solis Disclaims. You understand that the Solier is not ordering any warrandes and that there are unpoken, or any other merchanisality, at times for a perticular purpose, or any other warrandos, express or implied by the Solier, expensing the vehicle warrand processes of the vehicle warrand or explicate a verticen warrandy or service contract within 90 days from the date of this contract.

The foregoing discisioner of implied unrimities done not apply if this contract covers a new vehicle that was obtained primarily for persental use unless you were informed in writing party to signing this contract that the vehicle was said on an "as is' at "with all faults" leads and that you bear the unites risk as to the quality and performance of the vehicle.

An implied warranty of morchsmanitry generally means that the retricts is fit or the ordinary purpose for which such vehicles are generally used. A for the ordinary purpose for which such vehicles are purposed as everating that may after when the surround of times for a purpose purpose for which you require the subtide and you rety on the Seller's skill or judgmont to turnish a subside which and you rety on the Seller's skill or judgmont to turnish a subside which seller's skill or judgmont to turnish a subside skill or judgmont to turnish a subside which seller's skill or judgmont to turnish a subside skill or judgmont to turnish skill

This provision does not affect any warrantee covering the vahidle which may be provided by ing vehicle manufacturer.

Beed Cor Buyers Guide. The interestions yet see on the window form for this vehicle is part of this contract, information on the window form overrides any contrary proviptions in the contract of sale.

evertense any centrary provisions in the contract of eals.

Notice of Substitution of Centract. If Selier obtained size whicle from demorphism (SM) on instrument credit synus, this contract will be substituted by Soler let and replice it as Selier's obtainable to pay SM will be substituted by Soler let and replice it selects obtainable to pay SM for the vehicle you are purchasing. The substitution will not strange the smooth you have agreed to pay the Solor, the payment echedule, the linear octains or any of your rights and duties for this purchase. The larme finis conflict call city your rains and only obtained to Selier. SML or shy spinor belief of this confract.

NOTICE! ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES DETAINED PURSUANT HERETO OR WITH THE PROCEEDS MEREOF, RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

The preceding NOTICE applies only to goods or services obtained primarily for personal, family, or household use. In all other cases, Buyer will not sesent against any subsequent holder or assignee of this contract any cisims or detenses the Buyer (debtor) may have against the Seller, or against the manufacturer of the vahicle or equipment obtained under this contract.

MINNESOTA DEPARTMENT OF FUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
445 MINNESOTA ST.. ST. PAUL. MN 55101
445 MINNESOTA ST.. ST. PAUL. MN 55101
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

WHITCOMB JEREMY JON 4150 REGENT AVE #7 ROBBINSDALE MN 55422

	CHEV	4WE	·-·- (G0620	R100
Year 1GNDT1	Make 3W5Y229	3688	Q 1 / Securit		

RETAIN THIS DOCUMENT - See reverse side of this form for removing this lien.

*
ETA529
1ST SECUR

GMAC PO BOX 8122 COCKEYSVILLE MD 2

EXHIBIT

In re:

Chapter 13

Jeremy Jon Whitcomb,

Bky. No. 04-45272-RJK

Debtor(s).

Affidavit of J. Wood

- I, J. Wood, of General Motors Acceptance Corporation, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:
- 1. General Motors Acceptance Corporation has a security interest in the following (the "Collateral"):

U00 CHEVBLAZER VIN/HIN: 1GNDT13W5Y2293688.

- 2. \$15,218.89 is the outstanding balance under the contract as of September 20, 2004.
- 3. \$\frac{\$794.90}{}\$ is the amount of the existing delinquency as of September 20, 2004.
- 4. \$12,621.67 is the replacement value of the Collateral.
- 5. Yes Appropriate insurance has been verified.

Further your affiant sayeth not.

Dated:

10/1/2004

Bankruptcy Specialist

General Motors Acceptance Corporation

Subscribed and sworn to before me on October 1, 2004

Notary



In re:

Case No.04-45272 RJK Chapter 13

Jeremy Jon Whitcomb,

Debtor.

MEMORANDUM IN SUPPORT OF OBJECTION TO CONFIRMATION

GMAC submits this memorandum of law in support of its objection to confirmation in the above-entitled matter.

FACTS

GMAC holds a valid, perfected interest in a 2000 Chevrolet Blazer, VIN 1GNDT13W5Y2293688 (the "Vehicle").

The balance due to GMAC as of the petition date totals \$15,218.89. The interest rate on the Contract is 10.99%. The fair market value of the Vehicle is \$12,621.67. Accordingly, the claim of GMAC should be treated as secured to the extent of \$12,621.67.

The Plan, however, provides for (i) GMAC's secured claim of \$15,000.00; (ii) total payment on GMAC's secured claim of \$8,500.00; and (iii) monthly payments of \$200.00 commencing in month 1 for 7 months and monthly payments of \$450.00 commencing in month 8 until paid.

DISCUSSION

Pursuant to 11 U.S.C. §1325(a)(5), a plan must distribute deferred cash payments equal to the present value of the secured claim. *Rake v. Wade*, 113 S.Ct. 2187, 124 L.Ed.2d 424 (1993). In this case, the Debtor has proposed payments that do not satisfy GMAC's secured claim plus interest at the contract rate. Accordingly, the Plan does not meet the confirmation requisites and should be denied.

CONCLUSION

For all of the reasons set forth herein, GMAC respectfully requests that the Court deny confirmation of Debtor's Chapter 13 Plan.

Dated: October 6, 2004 RIEZMAN BERGER, P.C.

/e/ Marilyn J. Washburn Marilyn J. Washburn (#0324140) 7700 Bonhomme, 7th Floor St. Louis, MO 63105 (314) 727-0101

Attorneys for GMAC

In re:	Case No. 04-45272 RJK
Jeremy Jon Whitcomb	Chapter 13
Debtor.	
UNSWORN DEC	CLARATION FOR PROOF OF SERVICE
Riezman Berger, PC, with an offic 63105, declares that on the date set Confirmation upon each of the enby enclosing same in an envelope	torney licensed to practice law in this court, and employed by e address of 7700 Bonhomme, 7th Floor, St. Louis, MO t forth below, I served the annexed Objection to tities named below by mailing to each of them a copy thereof with first class mail postage prepaid and depositing same in ari addressed to each of them as follows:
United States Trustee 300 South 4th Street, Suite 1015 Minneapolis, MN 55415	(Attorney for Debtor) Malin D. Greenberg 600 S. Hwy 169 Ste. 1525 St. Louis Park, MN 55426
(Debtor) Jeremy Jon Whitcomb 4150 Regent Ave. N. Apt. 7 Robbinsdale, MN 55422	(Trustee) Jasmine Z. Keller 12 South 6th Street, Suite 310 Minneapolis, MN 55402
And I declare, under penalty of per	rjury, that the foregoing is true and correct.
Dated: October 6, 2004	Signed: /e/ Marilyn J. Washburn

In re:	Case No. 04-45272 RJR Chapter 13
Jeremy Jon Whitcomb,	
Debtor.	ORDER
This matter came before this	s Court for confirmation of the Chapter 13 plan of
reorganization of Debtor. Appearan	nces were noted in the record. Based upon all the files and
records, the Court makes this Order	pursuant to the Federal Rules of Bankruptcy Procedure.
IT IS HEREBY ORDERED	, That confirmation of the Chapter 13 plan of Debtor is
denied.	
Dated:	
	Robert J. Kressel
	United States Bankruptcy Judge